IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION NO :12601 of 1995

Dated: 12th July 2006.

Between:

Valuuru Venkateswara Rao, (died, per LR)
Valluri Venkata Ramakrishna

..... PETITIONERS

AND

The Government of Andhra Pradesh, rep. by the Sub-Collector, Vijayawada and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

W.P.NO.12601 OF 1995
And
C.R.P.No.999 of 1997

ORAL ORDER:

**W.P.NO.12601 OF 1995**

The 1st petitioner, who died during the pendency of the writ petition filed declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, being C.C.No.2239 of 1976, some time in the year 1976. The 2nd petitioner, who was brought on record as the Legal Representative of the deceased 1st petitioner, by an order of this Court dated 03-03-2004, it appears, also filed a separate declaration under the abovementioned Act in C.C.No.2232 of 1976. Both the declarations were clubbed together and considered. On 14-05-1979 the

3rd respondent prepared a draft statement under Section 8(1) of the Act, tentatively, determining the excess holding held by both the petitioners herein, and invited their objections. The 1st petitioner filed his objections and the 3rd respondent by his order dated 01-09-1981, purporting to the one, under Section 8(4) of the Act, declared that the 1st petitioner held land in excess of the ceiling limit to an extent of 24,848 square meters. Aggrieved by the said order, the 1st petitioner preferred an appeal to the

2nd respondent. The 2nd respondent by his order dated

30-01-1988, allowed the appeal and remanded the matter to the 3rd respondent, directing him to take further action and make fresh computation, in view of the findings recorded by the 2nd respondent in the appellate order. On remission, the 3rd respondent passed orders afresh under Section 8(4) of the Act, dated 18-06-1993, declaring the

1st petitioner to be a non-surplus holder. However, the

1st petitioner was aggrieved by the inclusion of one of the items in his holding to an extent of 1200 square meters in N.T.S.No.369 at Moghalrajpuram, Vijayawada. It appears from the record that the said piece of land was subject matter of Land Acquisition Proceedings, initiated some time in the year 1975, prior to the coming of the Urban Land (Ceiling & Regulation) Act, 1976, into force. For the sake of completing the narration of the facts, it must be mentioned here that the original notification issued in the year 1975 under Section 4(1) of the Act, got lapsed and subsequent notification came to be issued on 30-06-1977 and possession of the property was taken on 18-06-1978. The question whether compensation should be paid, with respect to the said piece of land, either under the provisions of the Land Acquisition Act or under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976, fell for the consideration of this Court in Writ Petition No.8682 of 1987. A learned Judge of this Court by his judgment dated 16-04-1992, came to the

conclusion that the said piece of land is required to be taken in accordance with the procedure established under the Land Acquisition Act and compensation be paid in terms of the provisions of the Land Acquisition Act. The relevant portion of the said order reads as follows:

> " ..... But that will not have any effect on the present proceedings under the Land Acquisition Act. Therefore, I think it just and proper to direct the respondents to initiate the proceedings under the Land Acquisition Act by issuing the necessary notification under Section 4(1) of the Land Acquisition Act and pass award and thereafter pay the compensation according to the terms of the award within one year from the date of receipt of this order. The writ petition is accordingly disposed of. No costs."

As a matter of fact, it is pursuant to the said judgment, the second notification under Section 4(1) of the Land Acquisition Act, referred to above, came to be issued. Therefore, the 1st petitioner felt aggrieved by the inclusion of the abovementioned piece of land in his holding, notwithstanding the fact that the 3rd respondent came to the conclusion that the 1st petitioner did not hold any extent of land in excess of the ceiling prescribed

under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976. He therefore, preferred a further appeal to the

2nd respondent, which came to be numbered as C.No.VJA/154/93. Interestingly, the Sub Collector, Viajayawada, who is the Land Acquisition Officer concerned with the abovementioned acquisition, also chose to prefer an appeal to the 2nd respondent against the decision of the 3rd respondent dated 18-06-1995. Both the matters came to be clubbed together and disposed of by an order dated 24-04-1995, which is challenged in the present writ petition.

It is to be mentioned here that the 2nd respondent once again came the conclusion that the order of the

3rd respondent dated 18-06-1993, is required to be set aside and the matter remanded for fresh computation, in the light of the observations made by the 2nd respondent. Challenging the same, the present writ petition is filed with the prayer as follows:

> " For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to issue a writ of Certiorari or other appropriate order or direction in the nature of a writ calling for the records resulting in the order dated 24.41995 in C.No.VJA/154/93 and C.No.VJA/346/93 and set aside the same and consequently direct the

respondents to exclude 1200 sq.mts. in NTS.No.369 situated at Moghalrajpuram, Vijayawada from the holding of the petitioner under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

This Court is not concerned with the conclusions reached by the 2nd respondent in the impugned order dated 24-04-1995.

The learned counsel for the petitioner Sri Nalin Kumar urged the following points;

1. that the State cannot be called as a person aggrieved within the meaning of the expression occurring under Section 33 of the U.L.C. Act and therefore, the State can not file an appeal against an order of the competent authority, determining the holding of a declarent under the Land Ceilings Act, whether the determination be that a particular declarant holds within the ceiling prescribed by the Act or excess of the same.

2. that assuming for the sake of argument, the State can prefer an appeal. The Land

Acquisition Officer, is no way concerned with the correctness of the decision of the 3rd respondent herein dated 08-06-1993 and therefore, the appeal preferred by the Land Acquisition Officer-respondent No.1 herein, is wholly in competent.

To answer the first point, an examination of the scheme of the Urban Land (Ceiling & Regulation) Act, 1976, is required. The said enactment is a law made by the Parliament, pursuant to the resolutions passed by various States legislatures including the State of Andhra Pradesh under Article 252(1) of the Constitution of India. In substance, the Parliament believes that there should be some regulation on the holding of the vacant land in urban agglomeration in this country. The Parliament, therefore, declared under Section 3 of the Act that no person should be entitled to hold any vacant land in excess of the ceiling limit, except as otherwise provided under the Act.

Under Section 6 of the Act, every person, holding vacant land in excess of the ceiling limit prescribed under the Act, on the date of commencement of the Act, is obligated to file a statement before the competent authority. The expressions 'vacant land' and 'competent authority', etc., are defined expressions under the Act (the details are not necessary for the present purpose). Under

Section 8 of the Act, the competent authority is required to enquire into the statements filed under Section 6 of the Act and prepare a draft statement, containing various details under Section 8(2) of the Act. Under Sub section (3) of Section 8 of the Act, such draft statement is required to be served on the declarant, calling upon him to file his objections, if any, to the draft statement. Under Sub section (4), the competent authority is required to consider the objections, if any, received, pursuant to the notification under Sub section (3) and pass appropriate order. Obviously, the entire procedure under Section 8 of the Act is that the competent authority, prepares a statement, tentatively, indicating the excess holding of the declarant, thereupon obligating itself to put the declarant on notice as to the tentative statement and on receipt of the objections of the declarant, it is required to consider the same and reach a final conclusion, whether the declarant really holds land in excess of the ceiling limited prescribed under the Act.

Under Section 9 of the Act, the competent authority is required to prepare a final statement in accordance with the conclusions reached by it, after following the procedure contemplated under Section 8 of the Act, indicated above. It may not be necessary to examine the scheme of the other provisions of the Act for the present purpose, excepting Sections 33 and 34 of the Act.

Section 33 of the Act provides for an appeal to the appellate authority. Section 33 reads as follows:

> "**33. Appeal**:-- (1) Any person aggrieved by an order made by the competent authority under this Act, not being an order under section 11 or an order under sub-section (1) of section 30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed.
>
> Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal intime.
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> (2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as it deems fit as expeditiously as possible.
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> (3) Every order passed by the appellate authority under this section shall be final."

It can be noticed from the above that the appellate authority, is such authority, as is prescribed by the State. In the context of the present case, the 2nd respondent happens to be such an appellate authority.

Section 34 of the Act, empowers the State to call for a record or order, passed and the proceedings taken

under the Act, except those orders, which are specifically made applicable under various provisions of the Act. Section 34 of the Act reads as follows:

> "**34. Revision by State Government** : -- The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under section 12 or section 30 or section 33 for the purpose of satisfying itself as to the legality of propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:
>
> Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

It is not in dispute that a decision of the competent authority under Sections 8 and 9 of the Act, are not otherwise appealable, except under Section 33 of the Act. Then the question, whether an appeal by the State is competent under the provisions of Section 33 of the Act, is required to be examined.

As can be seen from the language of Section 33 of the Act, an appeal can be filed by a person, aggrieved by an order made by the competent authority. In the context of the present case, the determination of the holding of

the petitioner, in accordance with the provisions of the Act, the determination is made by an officer of the State and a person aggrieved against such determination, in my view, can only be the subject (declarant), but not the State, which is the authority determining the question of excess holding. Therefore, it can never be described as a 'person aggrieved' within the meaning of the said expression under Section 33 of the Act.

To demonstrate the point, it may not be out of place to refer to the provisions and scheme of the Land Reforms A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1973, under the scheme of the said Act, where also, an upper limit is prescribed on the holdings of the agricultural lands. The holders of land are required to file a statement, under Section 8 of the said Act, to a Tribunal constituted under Section 6 of the said Act. The said Tribunal, as per the mandate of the Legislature, is required to consist of not more than three members, of whom, at least, one is required to be a person qualified to the post of District Magistrate, who is required to be the Chairman of such a multi-member Tribunal. The said Tribunal is required to consider the declaration made under Section 6 of the said Act and determine whether the declarant comes under the excess of the ceiling limit prescribed under the Act and any determination made by such a Tribunal, is made appelable under Section 20 of the said Act.

In view of the fact that the determination is made by a body independent of the Government, sub-section (5) of Section 20 of the Act, clearly confers a right on the Government to prefer an appeal to the appellate Tribunal constituted under Section 20(1) . In fact, Sub section 5 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974, reads as follows:

> "(5) Where the Government are aggrieved by an order passed by the Tribunal or the Revenue Divisional Officer, they may file an appeal to the Appellate Tribunal against that order."

Therefore, I am of the opinion that the Legislature is conscious of the fact that where the rights and obligations of a citizen are required to be determined by a body independent of the State, whether judicial or quasi-judicial, such decisions are made appealable both at the instance of the State, as well as the subject.

In the context of the Urban Land (Ceiling and Regulation) Act, 1976, where the determination is made by the State itself, to consider the State as a person aggrieved, occurring under Section 33 of the said Act, would be wholly illogical, because, the determination is, essentially, made by the State through one of its offices.

Further, the Legislature recognized that there can be irregularities in the determination made by the competent authority in a given case, which require to be examined and rectified, if need be and, therefore, vested a *suo motu* revisionary power in the State under Section

34 of the Act.

For the above mentioned reasons, I am of the opinion that the appeal at the instance of the State against the determination made under the Urban Land (Ceiling and Regulation) Act, 1976, by the competent authority, is wholly incompetent and if the State, for any reason, comes to the conclusion that the determination made by the competent authority in a given case suffers from any infirmity or illegality, the only recourse available to the State, is to seek revision of the order under Section 34 of the Act.

In view of the above discussion, I am of the opinion that the appeal preferred by the 1st respondent herein, i.e., C.No.VJA/346/93, is wholly incompetent and consequently, the various findings recorded by the 2nd respondent, pursuant to the objections raised by the 1st respondent in his appeal, are required to be quashed.

Insofar as the appeal of the petitioner is concerned, the 2nd respondent rightly rejected the appeal, in view of the decisions of this Court in Writ Petition No.877 of 1984, dated 22-04-1986, Writ Petition No.8682 of 1987 dated 16-04-1992 and Contempt Case No.336 of 1993, dated 12-11-1993 and the reasons recorded by the 2nd respondent in this regard, are impeccable.

In the result, the impugned order, insofar as it directs the 3rd respondent to make a fresh computation in

the light of the various observations made by the 2nd respondent, is liable to be quashed and the same is hereby quashed.

It is, however, open to the State that for any reason if it comes to the conclusion that the determination made by the 3rd respondent on 08-06-1993, in case of the petitioner, suffers from any illegality or infirmity, the same can be refused in exercise of the provisions under Section 34 of the Act.

The writ petition is accordingly disposed of to the extent indicated above, but in the circumstances, there will be no order as to costs.

**C.R.P.No.999 of 1997**

Pursuant to the decision of this Court in Writ Petition No. 8682 of 1987, dated 16-04-1992, proceedings, under Land Acquisition Act, were initiated, property acquired and compensation was determined by the Land Acquisition Officer. Not satisfied with the determination of the compensation, the petitioner made a reference to the Civil Court under Section 18 of the Act, which was, in fact, made in O.P.No.342 of 1991. The said O.P. was decided on 07-04-1995, determining the amount of compensation payable to the petitioner. It appears that the decree of the Civil Court became final and the petitioner sought to execute the decree. In the execution proceedings, the respondents deposited the

money into the Court, however, when the petitioner sought to withdraw the said amount by filing a cheque-petition, objections were raised by the State, on the ground of pendency of the abovementioned writ petition. Therefore, the Civil Court declined to release the amounts. Hence, this Civil Revision Petition.

In view of the decision of this Court, the objection of the State does not survive any more and the Revision is also required to be allowed without prejudice to the rights of the State to raise any other objections, available in law.

The Civil Revision Petition is, accordingly, allowed as prayed for.

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J.Chelameswar, J

mrk
12th July 2006.